

The Initiatives and Referendum Process in Utah

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Popular initiatives and referendums have a long and idealistic history in the United States as instruments of popular sovereignty. The trend to include initiatives and referendums in state constitutions began as many of the Western states were being formed and the Populist Movement spread across the country. Utah was the second state in the nation to adopt the use of these election tools in 1900 following the lead of South Dakota. Early advocates of the new election processes were Populists who believed that if the people were truly “the sovereign” they should have the power to overrule acts of their representative government or propose and pass laws themselves. The initiatives and referendum process has been used in several states to dramatically affect public policy, but in most cases the impact on policy has been minor. Utah has used the initiative or referendum to address a variety of issues from changing liquor laws to removing the sales tax on food. The initiative process in Utah is somewhat complicated and intentionally difficult so as to limit initiatives that are frivolous or have little public support. It now takes ten percent of the voting population in at least 26 of the 29 State Senate Districts and ten percent statewide to validate a proposed initiative. With the rapid increase in technology and the possibility to vote online, the initiatives and referendum process may enter a new era of exploitation.

Definitions

There are important differences between initiatives and referendums.

- An **Initiative** is the process whereby citizens can adopt laws or amend the state constitution. There are two types of referendum processes.
- A **Popular Referendum** is a process whereby citizens have the ability to send legislation passed by the legislature to a vote of the people to either accept or reject that legislation.
- A **Legislative Referendum** is a process where the legislature, elected official or other official agency of government refers constitutional amendments, statutes, bond proposals or other acts of government to the people to either accept or reject the proposal.

History

The initiatives and referendum processes are an outgrowth of the early New England Town Hall meetings where citizens exercised direct democracy by voting on community issues. Thomas Jefferson proposed that a referendum process be included in the Virginia State Constitution and a number of New England states used the Legislative Referendum process to approve their own state constitutions. Despite these early efforts, the initiatives and referendum process did not really gain momentum until the Populist Movement of the late 1800s. The Populists advocated many changes to decrease the power of special interests and political machines. Changes desired (and eventually won) by the Populists included the professional management in local government and the council-manager form of government, merit systems for civil service, direct election of U.S. Senators, women’s suffrage, secret ballot elections, primary elections and the initiatives and referendum processes. South Dakota, Utah, Oregon, and Montana were the first states to adopt these processes. Western states had a keen interest in these processes and issues. They saw an opportunity to ensure that government in the West was not run through the patronage system that was rampant in the East, which was made infamous by Tammany Hall in New York. Additionally,

these processes also boosted Western clout in the national political process. Today, 27 states have some form of initiative and/or referendum process.

Pros

Proponents of the initiatives and referendum process point to the advantages of direct democracy. They claim that in a republic elected representatives can, at times, become consumed with their power and take actions that represent their own self-interest and not the interests of the people. Initiatives can be used to make the will of the people law on issues that elected officials are unwilling to address. At other times actions may be taken by state legislatures that are potentially contrary to the state constitution. Popular Referendums can effectively repeal legislation passed by elected officials. Proponents also claim that elected officials are particularly susceptible to special interests and their financial influence. Initiatives and referendums could be an effective check on this perceived influence by special interest groups.

Cons

Those arguing against the use of initiatives and referendums point out that the expense of gathering names for the petitions needed to put an initiative or referendum on the ballot requires large sums of money. It is usually large corporations or special interests who can afford to spend the amounts needed to organize and finance the name-gathering and hearing requirements of the process, effectively “hijacking” the process from the intended direct democracy ideal. A second major argument against the initiatives and referendums process is lack of information and deliberation that is available to the general citizenry. Opponents argue that the public is not adequately informed to make major public policy decisions and usually acts on emotion or the popularity of the issue. This argument includes those who say America is a republic, not a democracy for good reason – we elect representatives to study and decide on critical issues and the people have a voice on issues and candidates through the election process. A third argument against the initiatives and referendums process is that any statute passed by the people in this process must be implemented by governments who will change the law to suit their needs. Finally, it has been demonstrated that citizen initiated legislation can have devastating consequences on states as the new laws are not carefully considered against existing needs and demands. This information is not readily available to citizens as they decide whether or not to vote on proposed initiatives. Laws passed by initiative often end up in the courts for interpretation and to resolve conflicts with other state statutes.

Utah’s Experience

Utah has had extensive experience with the initiatives and referendum process. Since 1960, Utah has had at least 25 initiatives or referendums on the ballot. During this time some important issues have been placed before the people for their vote (not a complete list):

- 1968 Liquor Initiative
- 1974 Land Use Act Referendum
- 1976 Freedom from Compulsory Fluoridation and Medication Act (passed)
- 1976 The Utah Recall and Advisory Recall Act (defeated)
- 1980 Elimination of the Sales Tax on Food (defeated)
- 1980 Tax Limitation Act (defeated)
- 1984 Cable TV Decency Act (defeated)
- 1988 Tax and Spending Limitations (defeated)
- 1988 Tax Reductions (defeated)

- 1988 Income Tax Credit for Private Education (defeated)
- 1990 Removal of State and Local Tax on Food (defeated)
- 1992 County Option on Pari-mutuel Wagering (defeated)
- 1994 Term Limits and Election by Majority Vote or by Run-off (defeated)
- 1999 English as the Official Language of Utah (sent to Legislature – defeated)
- 2000 Utah Property Protection Act (passed)
- 2002 Radioactive Waste Restrictions Act (defeated)
- 2004 Constitutional Amendment – Joint Resolution on Marriage (defeated)
- 2004 Utah Clean Water, Quality Growth and Open Space Initiative (defeated)

Utah currently has one initiative in process for the 2006 election, “Popular Proportional Selection of Presidential Electors.”

Most initiatives and referendums placed before voters tend to fail in Utah. This is also true in the rest of the states utilizing this method. There are probably many reasons, but a central reason is the inability to engage in meaningful debate and the inability to modify the language once it is placed before the voters.

Utah’s Process

The Utah Legislature has modified the initiatives and referendums process over the years as the state has experienced new and more vigorous initiatives and referendums campaigns. The trend is to make the process more difficult so as to prevent frivolous, special interest, and unpopular initiatives from reaching the ballot. In Utah, sponsors must complete the following:

1. File an application with the Lieutenant Governor’s Office. The application must state whether persons gathering signatures for the petition may be paid for doing so. The Lt. Governor may reject the application if the proposed law is deemed to be unconstitutional, nonsensical, if the proposal could not actually become law if passed or if the proposal is substantially identical to other initiatives evaluated over the past two years.
2. Hold public hearings throughout the state prior to circulating an initiative. Sponsors (not the State) must hold a public hearing in each of the seven geographical regions of the state. Two of these hearings must be held in a first class county (Utah’s largest counties as measured by population size) but not the same county. Adequate notification and records must be made for these hearings.
3. Print copies of the petition and signature sheet and bring them to the Lieutenant Governor’s Office for numbering.
4. Gather the required number of signatures. Sponsors must collect signatures of registered voters according to two major categories. “First, the sponsors must collect a number of signatures equal to 10% of all votes cast for governor in the last gubernatorial election. Second, sponsors must collect a number of signatures from each of at least 26 of the 29 Utah State Senate districts equal to 10% of votes cast for governor in that district.” (To submit an initiative to the legislature, the signature requirement is 5% for both categories.)
5. Submit completed petitions to the county clerks for verification of signatures. Signatures must be submitted to the county clerk by June 1 to appear on the general election ballot (by November 15 to be submitted to the legislature).

The Future of Initiatives and Referendums

The trend for the use of initiatives and referendums in states that allow their use is generally increasing. States like California and Oregon have gone through major upheavals as a result of citizen-passed initiatives and more initiatives are expected. The famous Proposition 13 in California completely changed the tax structure in that state and set off a chain reaction of tax initiatives across the country. Other recent initiatives in California have related to controversial topics such as public services for illegal aliens and stem cell research and may portend how contentious topics are addressed in making public policy.

Technology is impacting the way elections are conducted through both access to information and the way citizens vote. Some of the criticisms of initiatives and referendums are diminishing as information on public policy issues is made more available through the Internet and other information sources. There is a “New Populism” emerging based on access to information on public policy. Anyone with a website can distribute their opinions on public policy, information in public and university libraries can be accessed by anyone on a home computer, and public opinion surveys or fund-raising can be conducted on-line as demonstrated in the last presidential election by Howard Dean. In addition, the use of electronic voting, vote-by-mail and new innovations for voting on-line will make direct democracy more practical and could place more emphasis on the use of initiatives and referendums in making public policy. Despite the changes in information access and the potential involvement of a new generation of computer-savvy voters, the largest concern continues to be the influence of special interest groups on the initiative process and the money they can put into mounting an initiative or referendum campaign. Direct democracy holds a lot of promise as long as it remains democratic.

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